ITEM 1008-D

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97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 97-463

# FOR THE RELIEF OF UILI TUIFUA, TALAMEAFOOU TUIFUA, HETA TUIFUA, SATEKI TUIFUA, ILAISAANE TUIFUA, AND OFA HEMOONI TUIFUA

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MARCH 18, 1982.—Committed to the Committee of the Whole House and ordered to be printed

COMPLETED

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Mr. MAZZOLI, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H.R. 3592]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3592), for the relief of Uili Tuifua, Talameafoou Tuifua, Heta Tuifua, Sateki Tuifua, Ilaisaane Tuifua, and Ofa Hemooni Tuifua, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

**That, for the purposes of the Immigration and Nationality Act, notwithstanding the death on April 4, 1981 of Ana Tuifua, who was the beneficiary of an approved petition filed September 7, 1978 in her behalf by her sister, Salote Pale Vuki, a citizen of the United States, Uili Tuifua, the spouse of Ana Tuifua, and their children, Talameafoou Tuifua, Heta Tuifua, Sateki Tuifua, Ilaisaane Tuifua, and Ofa Hemooni Tuifua, shall, if otherwise eligible, be entitled to fifth preference status under section 203(a)(5) of the Act as of September 7, 1978.**

### PURPOSE OF THE BILL

The purpose of this bill, as amended, is to allow the Tuifua family to qualify for fifth preference status as the derivative beneficiaries of a visa petition submitted on behalf of the sister of a United States citizen. The bill is amended in accordance with established precedents.

### STATEMENT OF THE FACTS

The beneficiaries are natives and citizens of Tonga. They include the father, age 42, and five children ages 17, 15, 13, 11 and 8. The father was the husband of a Tonga native who was the beneficiary of an

89-007 O

approved fifth preference visa petition filed by her United States citizen sister. In February of 1981 she was granted an immigrant visa. The beneficiaries were awarded derivative visas. En route to the airport to begin their journey to the United States, the wife with the immigrant visa became ill and turned back for medical attention. She died hours later. After the funeral, the father and the children continued on their way to the United States when, upon arriving in Honolulu, Hawaii April 16, 1981, the Immigration and Naturalization Service deferred inspection to San Francisco on the grounds that the principal visa holder was deceased and the derivative visas therefore invalid. Their only close relatives, parents and six siblings of the deceased wife, live in the United States and provide support to the Tuifua family.

The pertinent facts in this case are contained in a letter dated October 29, 1981 from the executive assistant to the Commissioner of Immigrant and Naturalization to the Chairman of the Committee on the Judiciary regarding this bill. That letter and accompanying memorandum read as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*October 29, 1981.*

Hon. PETER W. RODINO, Jr.,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 3592) for the relief of Uili Tuifua, Talameafoou Tuifua, Heta Tuifua, Sateki Tuifua, Ilaisaane Tuifua, and Ofa Hemooni Tuifua, there is attached a memordanum of information concerning the beneficiaries.

The bill would grant the beneficiaries permanent residence in the United States as of the date of its enactment, upon payment of the required visa fees.

It is noted that in connection with the beneficiaries' entries into the United States as prospective immigrants, visa numbers were deducted. The Committee may wish to delete that portion of the bill which makes reference to that requirement.

Sincerely,

DAVID DIXON,
*Executive Assistant*
(For the Commissioner).

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES: RE H.R. 3592

The beneficiary, Uili Tuifua, a native and citizen of Tonga, was born on December 27, 1939. He is a widower and resides with his five children, all of whom are also beneficiaries, at the home of his late wife's sister and husband in Milpitas, California. He graduated from the equivalent of high school

in Tonga, and was employed on his father-in-law's farm as a planter, but claims to be currently unemployed in the United States. The beneficiary claims that he and his children derive all of their support from numerous relatives of his late wife in the United States. He claims assets in the amount of about $800 equity in a small house in Tonga, which he claims is worth about $1,800. He also claims no significant liabilities. Mr. Tuifua has no close relatives living in the United States. His father and nine half brothers and half sisters, natives and citizens of Tonga, reside in Tonga. Because he is the illegitimate son of his father, and was raised by his aunt, the beneficiary is not close to his half brothers and half sisters.

Mr. Tuifua has two children over the age of fourteen, also beneficiaries, Talameafoou and Heta Tuifua, natives and citizens of Tonga, who were born on August 11, 1964, and August 15, 1966, respectively. They are currently enrolled in the 12th and 9th grades in schools in Milpitas, California. They are unemployed and receive their subsistence from relatives of their deceased mother. Other than their father and brother and sisters, they have no close relatives living in the United States.

There are three younger children in the Tuifua family, who are also beneficiaries. They are Sateki, Ilaisaane, and Ofa Hemooni Tuifua, natives and citizens of Tonga, who were born on April 24, 1968, December 26, 1970, and July 26, 1973, respectively. They are enrolled in the 8th, 5th, and 3rd grades in schools in Milpitas, California. They too have no close relatives living in the United States.

The beneficiary, Uili Tuifua's late spouse, Ana Tuifua, a native and citizen of Tonga, was the beneficiary of an approved fifth preference petition, which had been filed by her sister, Salote Pale Vuki, a native of Tonga and naturalized citizen of the United States. Subsequently, on February 26, 1981, Ana Tuifua was issued a fifth preference immigrant visa; and, at the same time, the beneficiaries were issued immigrant visas as the spouse and children of a fifth preference immigrant. On April 4, 1981, while the family was en route to the airport in Tonga for the trip to the United States, Mrs. Tuifua was stricken ill and rushed to the hospital, where she died about five hours later. The cause of death is listed on the death certificate as shock, but the exact cause of death is not known. After the funeral, the beneficiaries continued their trip to the United States, where they arrived on April 16, 1981. They were paroled into the United States at Honolulu, Hawaii, pending exclusion proceedings against them, charging that they are excludable from the United States because they were not in possession of valid immigrant visas. Because of Mrs. Tuifua's death, the approved petition in her behalf was automatically revoked, invalidating the beneficiaries' immigrant visas. The Committee will be advised of the results of the exclusion proceedings.

On September 28, 1981, the Department of State su' nitted a report on this bill which reads as follows:

DEPARTMENT OF STATE,
*Washington, D.C., September 28, 1981.*

DEAR MR. CHAIRMAN: I refer to your request for a report concerning the case of the Tuifua family, beneficiaries of H.R. 3592, 97th Congress.

The bill would grant the beneficiaries permanent residence in the United States as of the date of enactment upon payment of the required visa fee. It also provides for the deduction of six numbers from the total number of immigrants and conditional entrants who may be admitted from the beneficiary's country of birth.

The United States Embassy at Suva, Fiji, where the beneficiaries were issued immigrant visas, has reported that subsequent to the issuance of fifth preference immigrant visas to the Tuifua family on February 28, 1981, the files were destroyed in accordance with records disposal regulations.

Sincerely,

RICHARD FAIRBANKS,
*Assistant Secretary for Congressional Relations.*

The author of the bill, Mr. Don Edwards, submitted the following statement of support on behalf of this legislation:

STATEMENT OF CONGRESSMAN DON EDWARDS ON H.R. 3592

I appreciate the opportunity to express my views on H.R. 3592, legislation I have introduced for the relief of the Tuifua family from the Kingdom of Tonga.

My legislation would confer permanent resident status on Mr. Uili Tuifua and his five minor children. The family is presently staying with relatives in my congressional district in San Jose, California.

The family's situation briefly is this. Mr. Tuifua was married to Ana Tuifua. Mrs. Tuifua was the beneficiary of a fifth preference visa petition filed by her United States citizen sister, and in February of 1981 was approved for an immigrant visa by the U.S. Embassy in Suva, Fiji. Her husband and their children were awarded derivative visas.

In April, the family started out for the United States. Mrs. Tuifua became ill enroute to the airport, and the family turned back so she could receive medical care. Within a few hours, Mrs. Tuifua had died.

After the funeral for Mrs. Tuifua, the family on April 16 continued on their way to the United States. Since they each held a valid immigrant visa, they believed they were entitled to enter the U.S. as permanent residents. Unfortunately, upon their arrival in Honolulu, Hawaii, they learned this was not necessarily the case. The Immigration and Naturalization Service has taken the position that since the principal visa holder is now deceased, the derivative visas are invalid.

I believe the family should be allowed to remain in the United States as permanent residents. To require them to return to Tonga would, in my view, pose a considerable hardship.

This family is already traumatized by the sudden and unexpected death of Mrs. Tuifua. Their only close relatives live in this country, and the emotional support and consolation these relatives have been providing has been invaluable in helping the family weather this tragedy they have suffered. To wrench the family, especially the younger children, from the support of their relatives would be a most cruel action.

Mr. Tuifua is a farmer, and farmed four acres of land in Tonga. The land, however, was not his own, and in a country where land is wealth, this meant the family was at a decided disadvantage. The small amount of acreage Mr. Tuifua farmed also supported another family, so the living he made was enough to put food on the family's table, but not much more.

The late Mrs. Tuifua worked at home as a seamstress. Her work brought cash assets into the home. This money was used to send the children to school, since in Tonga only primary education is free.

If the family returned to Tonga now, Mr. Tuifua could most likely return to farming. But, without Mrs. Tuifua's earnings, there is no way the farm could support the chilren's continued education. Any hopes for further education would be dashed, and the dreams Mr. and Mrs. Tuifua shared of a better life for their children could never be realized.

Furthermore, while Mr. Tuifua worked the land, there would be no one to care for the younger children. The only relatives the family has in Tonga are half brothers and sisters of Mr. Tuifua who live on an outlying island. Mr. Tuifua and these half brothers and sisters do not even maintain contact with one another. With no relatives to care for them, and with no funds to provide child care, the children would be left unsupervised and uncared for while their father worked.

These children's futures would be infinitely brighter and offer more opportunity if they were allowed to remain in this country. It is for these reasons, that I urge support for H.R. 3592.

The purpose of private legislation is to enable us to show compassion and to make exceptions in our immigration laws in unusual and particularly worthy cases. I believe the plight of the Tuifua family is precisely the type of case that private bills are meant to address.

It is an odd quirk of fate that the family finds itself in its predicament at all. Had Mrs. Tuifua died hours after entering this country, rather than hours before her planned departure, the problems this family now suffers over its immigration status never would have arisen.

In view of these unusual and sad circumstances, I strongly urge that H.R. 3592 be favorably considered.

## Budgetary Information

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

## Oversight Statement

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

## Committee Recommendations

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 3592, as amended, should be enacted and accordingly recommends that the bill do pass.

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